

Task Force on the Future for Growth and Development

Draft Recommendations - For Internal Discussion Only

(Revised November 20, 2008)

Summary

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- 15. Establish a Statewide Planning Advisory Committee**

1. Modernize the State’s Planning Visions to Achieve Smart and Sustainable Growth

A. Update the “Eight Visions” to Reflect a More Modern Approach to Growth and Development

The “Eight Visions” were first adopted by Maryland in the 1992 Economic Growth, Resource Protection, and Planning Act. They were initially developed by the Year 2020 Panel of Experts, an inter-disciplinary group convened by the Chesapeake Bay Commission in 1987 to evaluate the impact of future growth in the Chesapeake Bay Region. The 2020 Panel issued its report in December 1988 and described six visions needed to strike a balance between growth and environmental needs. These were ultimately codified in 1992, with two additional visions for a total of eight.

State Finance and Procurement Article §5-7A-01 provides that the Eight Visions are Maryland’s “Economic Growth, Resources Protection and Planning Policy” (*i.e.*, the State’s growth policy). Section 5-7A-02 limits State funding for various capital projects unless the projects are consistent with this growth policy or “the local plan of the jurisdiction in which the project is located.”

The Visions are also incorporated in Article 66B (Land Use) §1.01 and apply to all counties and municipalities in Maryland. Local jurisdictions are required to implement the Visions through the plan. Further, §4.09 requires that jurisdictions “shall ensure that the implementation of the provisions of the plan that comply with §§1.01 and 3.05(a) (4)(vi) and (viii) [the land use and sensitive areas elements] are achieved through the adoption of applicable zoning ordinances...subdivision ordinances...and other land use ordinances...that are consistent with the plan.”

The Visions are a now-familiar touchstone of Maryland land use law and policy, but they have been in place without amendment for 16 years. They have never been modernized to reflect and keep pace with current growth and development patterns and trends, or Maryland’s commitment to Smart Growth. It quickly became clear to the Task Force that the Visions should be updated and, through its Eight Visions Workgroup, the Task Force drafted, discussed and now recommends a new set of Visions to guide growth and development in Maryland to help achieve Smart and Sustainable Growth.

Following are the existing and the proposed revised Visions:

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The Existing Eight Visions

(pursuant to Economic Growth, Resource Protection, and Planning Act of 1992)

1. Development is concentrated in suitable areas;
2. Sensitive Areas are protected;
3. In rural areas, growth is directed to existing population centers and resource areas are protected;
4. Stewardship of the Chesapeake Bay and the land is a universal ethic;
5. Conservation of resources, including a reduction in resource consumption, is practiced;
6. To assure the achievement of [the] above, economic growth is encouraged and regulatory mechanisms are streamlined;
7. Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planned in areas where growth is to occur; and
8. Funding mechanisms are addressed to achieve these visions.

Proposed Revised Visions

- 20 1. **Quality of Life and Sustainability:** A high quality of life is achieved through universal
21 stewardship of the land, water and air resulting in sustainable communities and protection
22 of the environment.
- 23 2. **Public Participation:** Citizens are active partners in the planning and implementation of
24 community initiatives and are sensitive to their responsibilities in achieving community
25 goals.
- 26 3. **Growth Areas:** Growth is concentrated in existing population and business centers,
27 growth areas adjacent to these centers, or strategically selected new centers.
- 28 4. **Community Design:** Compact, mixed-use, walkable design consistent with existing
29 community character and located near available or planned transit options is encouraged
30 to ensure efficient use of land and transportation resources and preservation and
31 enhancement of natural systems, open spaces, recreational areas, and historical, cultural,
32 and archeological resources.
- 33 5. **Infrastructure:** Growth areas have the water resources and infrastructure to
34 accommodate population and business expansion in an orderly, efficient, and
35 environmentally sustainable manner.
- 36 6. **Transportation:** A well-maintained, multimodal transportation system facilitates the
37 safe, convenient, affordable and efficient movement of people, goods and services within
38 and between population and business centers.
- 39 7. **Housing:** A range of housing densities, types, and sizes provides residential options for
40 citizens of all ages and incomes.

8. **Economic Development:** Economic development and natural resource-based businesses that promote employment opportunities for all income levels within the capacity of the State's natural resources, public services, and public facilities are encouraged.
9. **Environmental Protection:** Land and water resources, including the Chesapeake and coastal bays, are carefully managed to restore and maintain healthy air and water, natural systems and living resources.
10. **Resource Conservation:** Waterways, forests, agricultural areas, open space, natural systems and scenic areas are conserved.
11. **Stewardship:** Government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection.
12. **Implementation:** Strategies, policies, programs and funding for growth and development, resource conservation, infrastructure, and transportation are integrated across the local, regional, State and interstate levels to achieve these visions.

The Visions are incorporated in State statutes, and therefore updating and amending the Visions will require legislation. Once the Visions are updated, local governments would be required to comply with them as part of their comprehensive plan update cycle, including any ensuing revisions of local land use ordinances. Of equal importance, the State Development Plan now being prepared by the State would need to incorporate the revised Visions, and State agencies would begin to evaluate programs and policies for compliance with the updated language of the proposed Visions.

The Task Force believes the revised Visions are more consistent with, and will further, Maryland's ongoing aspiration to develop and implement sound growth and development policy -- particularly Smart and Sustainable Growth. It recommends the enactment of legislation adopting these new Visions the 2009 General Assembly session.

2. Strengthen Comprehensive Plans

A. The General Assembly should respond to the recent Terrapin Run case with corrective legislation

The opinions of the Court of Appeals in *Trail, et al. v. Terrapin Run, LLC, et al.*, No. 44, September Term, 2007 (March 11, 2008) contains a wide-ranging discussion of the history of planning in Maryland and the role of a local jurisdiction's comprehensive plan. After analysis by its Terrapin Run Workgroup, the Task Force concluded that the overall effect of the opinion is to weaken the link between the comprehensive plan and its implementing ordinances such as zoning. See the Report of the Terrapin Run Workgroup at **Appendix []** for a summary and analysis of the court's opinion. With increasing growth pressures in Maryland, planning issues

1 have increased in complexity, and local governments and citizens are investing more of their
2 time and resources in comprehensive plans. The opinion from Terrapin Run would devalue that
3 significant government and citizen investment.

4 At a minimum, the Terrapin Run decision did not consider Section 4.09 of Article 66B which
5 requires that “a local jurisdiction shall ensure that the implementation of the provisions of the
6 plan...are achieved through the adoption of applicable zoning ordinances and regulations,
7 planned development ordinances and regulations, subdivision ordinances and regulations, and
8 other land use ordinances and regulations that are consistent with the plan.” The comprehensive
9 plan is also required to be reviewed at least once every six years and, if necessary, revised or
10 amended. In addition, the local jurisdiction is to ensure that the plan is implemented through land
11 use ordinances and regulations that are consistent with the plan.

12 The advantages of a comprehensive plan are apparent. First, the comprehensive plan is prepared
13 by professionals along with the planning commission or board, who are able to objectively
14 evaluate population projections, economic factors, resource limitations, and environmental
15 protection. Second, the process involves numerous stakeholders and is open to the public. It
16 represents the application of State-established planning criteria to the particular circumstances of
17 the local jurisdiction by the local jurisdiction. It represents the broad vision of the people of the
18 jurisdiction for their future. Third, although the plan can be revised more frequently, its 6-year
19 lifetime virtually assures that it will survive through changes of administration and the
20 membership of the local legislative body. This longer-term planning horizon reduces uncertainty
21 and facilitates the coordination of development with the necessary infrastructure.

22 Maryland is best served if all land use decisions conform to the overall comprehensive plan in
23 both the location and timing of development. Development of property consistent with the
24 locally developed and adopted comprehensive plan is mandated by statute, it is achievable, and it
25 is good policy. Accordingly, The Task Force believes that the General Assembly should clarify
26 this, by passage of appropriate legislation.

27 **The Task Force recommends amending Article 66B to remove any ambiguity created by**
28 ***Terrapin Run* and clarify that a local jurisdiction must implement and follow the**
29 **comprehensive plan it adopts, as contemplated by the State’s Economic Growth, Resource**
30 **Protection, and Planning Act of 1992. Any such amendment should be tailored to avoid**
31 **unintended consequences within Article 66B or other areas of the State’s planning laws,**
32 **and to preserve the distinction between the comprehensive plan as an overarching policy**
33 **document and land use ordinances and regulations that implement it.**

34 ***B. Provide earlier opportunities for State agency comment on local comprehensive plans***

35 For decades, MDP has led a formal process to review and comment upon local governments’
36 comprehensive plans. Currently, that comment period is statutorily required 60 days before the
37 local plan is adopted. The process, and the ultimate purposes of such review, would be enhanced

1 by the addition of an informal meeting and preliminary comment step earlier in the
2 comprehensive plan development process. Such a meeting would provide an opportunity for
3 more collaboration and for better incorporation of comments into the plan.

4 **The Task Force recommends that MDP, in coordination with each local government, adopt**
5 **a policy for meeting early in the comprehensive plan development process to coordinate**
6 **and collaborate about the jurisdiction’s comprehensive plan, and to facilitate the**
7 **incorporation of State comments into the plan, to the greatest extent possible, before its**
8 **adoption.**

9 ***C. Increase technical and financial support for local comprehensive planning, particularly in***
10 ***smaller communities with limited capacity***

11 Many local governments need technical and/or financial assistance to develop and implement
12 their comprehensive plans. MDP and other State agencies provide various forms of technical
13 assistance to all local governments. This includes information on best practices, data and
14 analysis, interpretation of policies and laws, etc. As planning issues in Maryland have become
15 more complex and as new required chapters or elements have been added to comprehensive
16 plans, the need for technical assistance has increased. At the same time, the State’s ability to
17 provide additional technical assistance is limited, with key financial assistance available mostly
18 to smaller jurisdictions. One new effort initiated by a collaboration of State agencies, the
19 Sustainable Communities Initiative, was designed to address these issues by helping lower
20 income communities afford consulting support for comprehensive planning, but this program
21 alone is not enough.

22 **The Task Force recommends that the State identify additional resources for providing**
23 **technical and/or financial assistance to local governments for development and**
24 **implementation of their comprehensive plans. Existing non-profit and university resources**
25 **should be examined as potentially efficient ways to provide such assistance. Currently,**
26 **some counties are providing planning assistance to their municipalities, and such voluntary**
27 **planning collaboration should be encouraged.**

28
29 **3. Collect Good Information for Good Planning**

30 Advancement and achievement of public policy objectives like Smart and Sustainable Growth
31 are helped by the application and analysis of broadly accepted and reliable information about
32 goals, indicators, trends, forecasts and the like (*i.e.*, metrics). Despite its critical importance,
33 little comprehensive quantitative information exists to measure how Maryland is growing at the
34 state, regional, and at times local levels. While some measures or indicators exist statewide,
35 additional ones are needed.

Measures or indicators should address at least the following:

- Amount and share of growth in and out of PFAs
- Density mix of growth in and out of PFAs
- Measures of housing choice, including affordability
- Measures of growth's impact on the environment (land, water, air and habitat)
- Indicators informing the fiscal cost of growth
- Agricultural preservation
- Development capacity analysis
- Jobs/housing balance
- Measures or indicators to inform the transportation impact of growth
- Indicators on growth's impact on business (job creation, fiscal impact, agri-business, tourism, forestry etc.)
- Indicators on growth's impacts to cultural and historic resources
- Measures or indicators on reporting the creation of new lots and building permits in and out of the PFA

The Task Force recommends that MDP work with local governments and other stakeholders, including the Task Force itself, to jointly develop a set of Smart and Sustainable Growth indicators that can be used at the local, regional and state levels. The Task Force recognizes that achievement versus these indicators will necessarily vary because of regional and other distinctions among local jurisdictions. Drafts of these indicators should be shared with the Task Force by July 1, 2009 for review and comment.

4. Sharpen the Focus of Priority Funding Areas (PFAs)

A. Target State resources within the existing Priority Funding Areas to move Smart Growth forward and to improve the State's return on investment

The fundamental purpose of Priority Funding Areas (PFAs), established by law in 1997, is to focus State spending to most efficiently and effectively use existing infrastructure, preserve existing neighborhoods, and preserve Maryland's fields, farms, and open spaces. By statute, PFAs include:

- Municipal boundaries as of January 1997
- Designated Neighborhood Program Areas
- Enterprise Zones
- Heritage Areas that are also county growth areas
- Area inside the Beltways

By statute, local governments may also certify additional areas consistent with stated criteria, as local growth areas.

Certain criteria must be met in order for an area to be a certified PFA -- existing or planned water and sewer service, average permitted residential density of 3.5 units per acre, growth plan consistent with projections, and a PFA size based on an assessment of land needed for 20 years' growth.

Like the "Eight Visions" passed in 1992, the 1997 PFA law has never been substantially changed or updated in view of evolving growth and development issues. Yet, PFAs are in many ways the lynchpin of the State's growth policy because they directly affect where the State can and does spend its money in support of growth.

A PFA Workgroup of the Task Force met to evaluate the efficacy of the PFAs, and it quickly became clear that this multifaceted and complex issue could not be addressed effectively within the limited time prior to delivery of this mandated report. Following is a brief summary of the issues the Workgroup identified.

Stakeholder perspectives on the performance of PFAs vary extensively. Because all land within incorporated municipalities before 1997 were automatically included within PFAs, the Maryland Municipal League (MML) is largely satisfied with PFAs as they currently exist, although MML would support extending PFAs to include growth areas established under HB1141. The Maryland Association of Counties (MACo) would prefer more flexibility in the criteria used to establish PFAs and, perhaps, requiring PFAs to be coterminous with growth areas designated in comprehensive plans. The environmental community is most concerned with tightening restrictions on development outside PFAs, while the development community is most concerned with removing barriers to development inside PFAs. The Maryland Department of Planning is resistant to eliminating the criteria that establish PFAs but supports policies that would both increase restrictions on development outside PFAs and decrease impediments to development inside PFAs. Every stakeholder group supports the idea of reconsidering the process through which State funds are restricted for projects inside PFAs; this includes the reexamining the set of programs subject to PFA review, the process of exceptions and appeals, and the criteria that warrant PFA review and merit a successful appeal.

Discussions among the PFA workgroup addressed proposals that would redefine the criteria for establishing PFAs, creating additional disincentives for development outside PFAs, and creating additional incentives for development inside PFAs. Ideas for redefining criteria for establishing

PFAs focused on trying to make PFAs consistent with growth areas in comprehensive plans. Ideas for creating additional disincentives for development outside PFAs included proposals to downzone land outside PFAs, imposing a development tax outside PFAs, and requiring the adoption of best available technologies on septic systems outside PFAs. Proposals for strengthening incentives for development inside PFAs included the establishment of PFA tiers in which particular regions within PFAs would receive even higher priority for funding under existing State programs. Perhaps because there was no clear consensus on the problem with existing PFAs, however, there was no consensus on which, if any, of these proposals for improving the performance of PFAs might be pursued or adopted.

Nonetheless, because the PFAs are so central to the State's growth and development policy, their intent, performance and efficacy must be fully evaluated, understood and improved, to the extent necessary and possible. **Therefore, the Task Force will make study of PFAs a Focus Area of its ongoing work, with the goal and intent of providing by November 1, 2009 a critical analysis of the effectiveness of PFAs along with recommendations for possible changes.**

5. Emphasize Transit-Oriented Development (TOD)

Maryland has a unique opportunity to leverage existing transit investment and promote more efficient land use through encouraging compact, mixed use development near its transit stations. This approach, known as "Transit-Oriented Development" or "TOD," can be pursued as a mechanism to promote transportation choice for many Maryland residents and provide a major focus for the accommodation of future growth in the State. TOD sites are often considered the best Smart Growth sites.

A TOD approach leverages the locational advantages of station areas by improving non-motorized access and clustering a mix of uses to reduce the number of trips that must be taken by automobile. Supported by transportation-demand management (TDM) strategies that change travel behavior (how, when and where people travel), TOD can help increase the overall efficiency of the State's transportation system, while providing an essential framework for more sustainable growth in the State. The approach can result in substantial quality of life improvements for Maryland households by cutting transportation and commuting time costs associated with the ownership and operation of vehicles, while promoting the development of more livable communities for current and future State residents.

Although Maryland's transit network provides a relatively high quality service, our current land use patterns do not provide for the most efficient use of transit. All too often, patrons have little choice but to access the transit network by car, and stations are surrounded by inefficient surface parking lots that render station areas unattractive and unsafe for pedestrians. The State's existing transit station areas hold tremendous opportunity for infill and revitalization that could be a major focus for the State's future growth. Indeed, if our existing station areas were developed

1 (within half mile radius) to maximize their TOD potential, they could theoretically accommodate
2 all of the State's projected growth for the next 20 years. Although realistically station areas and
3 transit capacity must be planned to accommodate appropriate levels of growth for their area, the
4 potential cost-savings, system efficiencies and quality of life improvements of TOD suggest that
5 this approach could play a major role in accommodating the State's future growth.

6 Despite large transit investments, and our status as the fifth most densely populated state in the
7 nation, Maryland continues to have a much higher share of travel by automobile than it does for
8 public transit. The U.S. Census Bureau found that on average Marylanders have the second-
9 worst commutes in the nation. Recent spikes in gasoline prices have prompted many
10 Marylanders to consider public transit seriously for the first time. In addition, there is an
11 increasing awareness across Maryland of the environmental consequences of auto travel. This
12 includes traffic congestion that wastes valuable time and energy and produce pollution that
13 harms our health and contributes to global warming. However, many of Maryland's would-be
14 transit-riders quickly face the limitations of our current transit system, and their frustration
15 returns them to their cars.

16
17 The relationship between transportation and land use presents a special Smart Growth challenge.
18 Smart Growth development patterns are important for efficient transportation; yet, such
19 development patterns are difficult to achieve without good transportation options. Similarly,
20 transportation services, especially transit service, are compromised by dispersed development
21 patterns that make efficient transit services difficult to deliver. Therefore, good transportation
22 service and good land use policy depend on each other to succeed.

23
24 The Task Force sees great promise in TOD and in Maryland's public transit system to make
25 increasingly more vital contributions toward feasible alternatives to auto travel, thereby relieving
26 traffic congestion, reducing our dependence on oil, curbing pollution, stimulating the economy,
27 and helping to sustain healthy, vibrant communities.

28
29 **Accordingly, the Task Force supports TOD as a key State policy initiative and makes the**
30 **following specific recommendations in support of TOD:**

- 31
32 • **The State and local governments should work cooperatively to promote**
33 **appropriate levels of development at existing transit station areas to support and**
34 **utilize the significant public investments in this expensive infrastructure.**
35 **Existing transit stations should be the first focus of state-local collaboration.**
36
- 37 • **Study feasible public interventions, both fiscal and programmatic, required to**
38 **support increased capacity for Maryland's future growth. Specifically, study the**
39 **feasibility and relationship of system and site-level investments required to**
40 **support focused growth around Maryland's existing transit network. The**

opportunities and barriers for such investments should be identified and investigated. This activity must involve active participation from both local and State agencies, as well as other stakeholders.

- The State should encourage compact development and mixed land uses in PFAs around transit areas. Local governments should respond by providing policy, programmatic, and regulatory frameworks that support development patterns that are walkable and transit supportive, and within a reasonable walking distance (typically 1/2 mile) of existing transit service. These measures should in turn promote mixed-income housing, employment and transportation alternatives that are more efficient, affordable and cost-effective. Substantial State incentives may be required to achieve these outcomes.
- State TOD incentives should be provided to local governments that adopt TOD-friendly planning, zoning, TOD supportive infrastructure policies and financing, TOD supportive housing programs, design and/or other measures that enable and permit high-quality TOD within existing transit station areas.
- Support local government adoption of TOD-friendly planning, zoning, and infrastructure investment. State agencies can assist through the development of TOD-supportive housing programs, model zoning codes and technical assistance to define community-appropriate, customized solutions that promote active, income-diverse, pedestrian- and transit-friendly communities.
- Create a capitalized TOD Revolving Loan Fund to provide gap financing for TODs. This program might be administered similarly to the DHCD Neighborhood Business Development Program, which incentivizes the creation of small business in targeted community revitalization areas.
- Define & implement a program for financing bicycle & pedestrian facilities in all TODs, and for financing structured parking for TODs where necessary to encourage redevelopment of surface lots. The Maryland Transportation Authority could act as the financing agency.
- Provide the State's full faith and credit to TOD-zone TIF districts.

6. Preserve Land for Resource Production and Protection

Maryland is the fifth most densely populated state in the country, yet the State has also made protection of rural lands a priority, both to preserve natural resources and the industries that depend upon them. Directing development to growth areas and away from rural areas is critical

1 to the protection of habitat, streams, rivers and the Bays, and equally important for the continued
2 viability of Maryland's agri-business, seafood and tourism industries.

3 Maryland has the sixth most expensive farmland in the country. Even in difficult economic
4 times, the average price for farmland in Maryland, according to the U.S. Department of
5 Agriculture, is \$9,100 an acre in 2008. Because a significant portion of our farmland is within
6 commuting distance of urban and suburban job centers, development pressure on this land is
7 intense. With an aging farmer population and increasing real estate prices, remaining farmland
8 in Maryland and the agriculture industry is threatened.

9 To help address this problem, the General Assembly passed a joint resolution in 2002 setting a
10 goal to preserve 1,030,000 acres in Maryland. To date, the Maryland Agricultural Land
11 Preservation Foundation (MALPF), the Rural Legacy program, and local Purchase of
12 Development Rights and Transfer of Development Rights programs have placed under protective
13 easement about half that stated amount.

14 Additionally, in 2006 the General Assembly passed HB2, which requires counties to have a
15 Priority Preservation Plan (PPA). A PPA includes the geographic delineation of areas that are
16 targeted for resource conservation preservation. HB2 also expressed the intent of the General
17 Assembly to commit \$20 million in additional funding for agricultural preservation "to the extent
18 the funds are available". To date, funding at this level has not been provided.

19 For Maryland to meet the challenge of growing while preserving the pastoral heritage of its rural
20 areas, the State should actively support programs to assist farm, forestry, seafood and recreation-
21 based businesses to achieve profitability and sustainability.

22 The following recommendations seek to address this challenge.

23 **A. Protect funding for Maryland's land protection programs and also ensure that their**
24 **sources are not diverted to other uses**

25 Maryland's critical land protection programs described above depend substantially on revenues
26 from the State's real estate transfer tax and agricultural transfer tax. In a declining real estate
27 market, revenues from these taxes are reduced, threatening funding for these programs. In
28 addition, although the current administration has not done so, prior administrations have diverted
29 these revenues to the general fund to be used for other purposes.

30 **Recognizing that the State's financial commitment to its land preservation programs is**
31 **essential to their success, the Task Force recommends that the State maximize available**
32 **resources for important preservation programs including the Critical Farms Program, the**
33 **Next Generation Farmland Program, the Installment Purchase Agreement Program, the**
34 **Maryland Agricultural Land Preservation Program, the Rural Legacy Program, and**

Program Open Space. The Task Force strongly encourages that funding sources for land protection and preservation be protected and never diverted to other uses.

B. Target Land Preservation Programs

The need for land preservation will always exceed the amount of public funds dedicated to that purpose, and current economic conditions and trends will exacerbate this problem. Therefore, resources should be targeted where possible to maximize return on the State's investment.

As noted above, in 2006 the General Assembly passed HB2, which requires counties to have a Priority Preservation Plan focused on designated Priority Preservation Areas (PPAs) which include the geographic delineation of areas that are targeted for resource conservation or preservation. A priority preservation area analysis assesses the status, vulnerability, threat and potential return on conservation investment in potential focus areas to do the following:

- Develop short- and long-term geographic and resource-specific objectives for land preservation and conservation in potential focus areas, based on the extent and configuration of land areas needed to sustain resources of interest;
- Evaluate the degree to which local land use management tools support achievement of those objectives in each area;
- Communicate conservation objectives and the strengths and weaknesses identified for supporting programs in an area; and
- Use the priority preservation area assessment and consultations with local government to select focus areas for the longer term, where resource-specific objectives are most likely to be achievable in those time frames.

Such targeting provides a good opportunity to enhance resource conservation efforts by applying the priority preservation area concept to target not just individual parcels, but large geographic areas rich in high quality natural resources that also benefit from the stabilizing effects of local zoning and land use management authority.

The State should concentrate its expenditures for land preservation programs where the substantial investment is also protected by local land use management authority such as zoning, subdivision regulations, and Priority Preservation Areas.

C. Support agricultural land preservation initiatives that protect resource-based industries

While Maryland is a national leader in land preservation programs, State and local purchase of land for preservation (via fee simple or preservation easement) alone will not save Maryland's rural lands. These programs need to be augmented by land management tools such as protective rural zoning and subdivision regulations. In addition, resource-based industries such as agriculture, forestry, recreation, and tourism need to be vibrant in order to help decrease the incentive for property owners to sell their rural lands to developers for sprawl development. The

1 loss of rural land to development and the resulting fragmentation of the landscape are damaging
2 to resource-based industries and to the environment.

3 **The Task Force recommends that the State and local governments look at comprehensive**
4 **approaches to land preservation, beyond purchasing land for preservation. This approach**
5 **should strengthen land management tools (e.g., protective rural zoning and subdivision**
6 **regulations) for rural lands and strengthen existing resource-based industries, thereby**
7 **decreasing the incentive for land owners to sell their land for development.**

8 **D. Explore Expansion of Transfer of Development Rights (TDR) Programs**

9 Ownership of a parcel of land confers upon its owner a number of rights, including the right to
10 use the property for one or more purposes, the right to cover a certain percentage of the site with
11 buildings, and the right to develop a certain number of dwelling units. A TDR program allows
12 these development rights to be acquired and transferred to another property, thereby protecting
13 the “sending” property from development and allowing more development on the “receiving”
14 property, typically in an area where growth is desirable and being directed.

15 State law authorizes local jurisdictions to enact TDR programs voluntarily. Few local
16 jurisdictions have done so, however, because of the complexity of TDR programs. Only two
17 jurisdictions that have TDR programs, Montgomery and Calvert Counties, have been able to
18 create successful programs that have preserved land while creating viable markets for the
19 transferred densities.

20 TDR programs are not a substitute for strong rural zoning that independently protects such lands.
21 However, despite the difficulties associated with creating viable TDR programs, particularly
22 those that transfer rights across jurisdictional boundaries, the Task Force believes that further
23 study of TDR viability is warranted. Though difficult to design and implement, a statewide or
24 regionally based TDR program holds promise because such programs yield broader “receiving”
25 areas for the transferred density.

26 **The Task Force recommends that an inter-agency and inter-governmental workgroup,**
27 **including State and local stakeholders, be convened to explore the viability of TDR**
28 **programs at all levels. The workgroup should report back to the Task Force with an**
29 **interim report by July 1, 2009, and a final report by November 1, 2009.**

30 31 **7. Assess and Address Critical Infrastructure Needs**

32

33 To achieve Smart and Sustainable Growth, we must build and maintain infrastructure in existing
34 communities. The basics -- water, sewer, roads, and schools -- are absolute prerequisites for
35 denser and more walkable communities. Libraries, parks, cultural/recreational and other similar

1 facilities enrich our communities and are critical amenities that attract people to live where they
2 do. Local, State and federal funds can meet only a small fraction of this demand.

3 An Infrastructure Assessment Workgroup of the Task Force studied a number of critical
4 infrastructure issues and provided the Task Force with a report. *See* the Workgroup's report at
5 [Appendix \[\]](#). Based on the Workgroup's report and further discussion, including the efforts
6 of an Adequate Public Facilities Workgroup described further below, the Task Force makes the
7 following recommendations to focus attention and resources on the State's infrastructure needs.

8 **A. Require that the Maryland Department of Planning update the 2004 Infrastructure Survey**
9 **and that local governments cooperate with the survey**

10 The State last conducted a comprehensive survey of its infrastructure in 2004. This survey
11 should be conducted at least every ten years to provide policymakers with a current
12 understanding of the condition of Maryland's infrastructure and how that condition promotes or
13 detracts from the State's ability to achieve Smart Growth priorities. The survey should identify
14 infrastructure needs that are the highest priority for achieving Smart and Sustainable Growth..

15 **The Task Force recommends that MDP, in conjunction with other State agencies, local**
16 **governments, and the Task Force, develop and implement changes to the 2004 survey**
17 **format to maximize its usefulness for the purposes described. Local governments should**
18 **participate fully in completing the survey, whose utility will be compromised if data is**
19 **incomplete.**

20 **B. Complete a ten-to-twenty year historical survey of State and local infrastructure investment**
21 **for schools; land preservation including agricultural and open space protection; and**
22 **transportation improvements**

23 The Task Force believes that State and local policymakers would benefit from a historical
24 perspective on infrastructure funding in Maryland, both to identify past trends and help plan for
25 future needs. Such a study should focus on spending, but also on the extent to which existing
26 infrastructure is being used efficiently and to its capacity.

27 **The Task Force recommends that the Department of Legislative Services, the entity with**
28 **access to the broadest spending and budget data, be asked to complete a historical**
29 **infrastructure study by November 1, 2009, engaging the assistance and resources of other**
30 **agencies and entities with access to relevant data and resources.**

31 **C. Expand the Department of Housing and Community Development's Local Government**
32 **Infrastructure Finance Program**

33 The State's Local Government Infrastructure Financing Program, administered by the
34 Department of Housing and Community Development (DHCD), issues bonds, on behalf of
35 counties, municipalities and/or their agencies, to finance projects that serve the community at

1 large. State issuance of such bonds helps smaller governments to achieve greater efficiency and
2 lower cost than individual bond issuances.

3 Eligible projects can include, but are not limited to, streetscape improvements, transportation
4 enhancements and water system and wastewater treatment facilities. Bonds issued through the
5 program are triple-A rated by virtue of municipal bond insurance and participants enjoy fixed,
6 tax-exempt interest rates. Actual interest rates depend on market conditions at the time of sale,
7 but depending on the size of the issue, economies of scale can further reduce issuance costs.
8 Local governments receive loans from the bond proceeds and must repay the debt incurred
9 through the bond financing. They also pay their pro-rata share of the costs of issuance of the
10 pooled bonds. A loan is a general obligation of the participating jurisdiction, secured by the full
11 faith, credit and taxing power of the local government.

12 Requests from local governments for assistance with municipal bond financing have nearly
13 tripled from \$33 million in 2007 to more than \$100 million for 2008. Accordingly, DHCD is
14 currently reviewing options for enhancing the reach of the Program as a means of making more
15 funds available to meet infrastructure needs, although the cost of bond insurance in the current
16 financial crisis is affecting all public finance. The Department is looking at other models for
17 infrastructure investment, including the Virginia Resource Authority, which provides a similar
18 service to the DHCD's Development's Local Government Infrastructure Finance Program but, at
19 a larger scale. Virginia's program uses the backing of the Commonwealth's "moral obligation"
20 to repay any municipal defaults; Maryland should consider the same, or even using its full faith
21 and credit, to minimize costs of municipal financing for local partners.

22 **The Task Force supports DHCD's efforts to expand the Local Government Infrastructure**
23 **Financing Program and requests that DHCD report to the Task Force, on an ongoing basis**
24 **but no later than June 1, 2009, on the success of its efforts.**

25 **D. Maximize Local Government Authority to Fund Local Infrastructure Needs**

26 Maryland's charter counties have ample authority to impose any type of new tax or fee as long as
27 State law does not preempt that tax or fee. On the other hand, under the Maryland Constitution,
28 a code county or a municipality must have express authority from the General Assembly to
29 impose a tax or fee. For example, if a code county wanted to impose a transfer tax to fund
30 infrastructure, the county would have to rely on the General Assembly to pass legislation
31 authorizing the imposition of a transfer tax. Many code counties and the municipalities have
32 been unsuccessful in persuading the General Assembly to authorize a new tax or fee.

33 In the area of financing, all counties and municipalities have the authority to adopt ordinances for
34 tax increment financing for public infrastructure.

35 All counties have authority to establish special tax districts for limited purposes such as
36 providing drainage improvements or providing street lighting. In addition, charter counties have

broad authority under the Express Powers Act to create special taxing districts to carry out most county services. However, authority to create special taxing district and to levy ad valorem taxes and issue bonds and other obligations for the purpose of financing infrastructure improvements is only authorized in eleven counties (Anne Arundel, Baltimore City, Calvert, Charles, Garrett, Harford, Howard, Prince George's, St. Mary's, Washington, and Wicomico). The type of infrastructure improvement authorized in special taxing districts include water and sewer systems, roads, lighting, parking, parks and recreational facilities, libraries, schools, transit facilities and solid waste facilities. Municipal corporations have the authority to create special taxing districts and to levy ad valorem taxes.

Particularly in view of the enormous demand for infrastructure and the practical limitations of the current financial climate, the State should provide counties and municipalities with the broadest possible authority for funding local infrastructure projects, including authority to use any reasonable tax, revenue source or financing vehicle. While the decision to use a particular tax or funding vehicle should always rest with local government, the State should continue to encourage local funding decisions that are consistent with the State's Smart Growth policies.

E. Improve the Effectiveness of Adequate Public Facilities Ordinances

Essential public facilities such as schools, roads, water, and sewer are necessary to ensure that communities are sustainable and, efficient communities. Often, paying for public facilities is not made a priority until current population demands attention be paid. The State authorizes local jurisdictions to enact Adequate Public Facilities Ordinances (APFOs), which condition development approvals under zoning and subdivision ordinances to meeting standards for public facilities such as roads, schools, water supply, sewage treatment, emergency services, libraries, ballfields and parks. Development cannot proceed until these standards are met.

The Task Force's APFO Workgroup was charged with assessing the impact of APFOs on growth patterns. See the Workgroup's report at [Appendix \[\]](#).

After consideration of the APFO Workgroup report, the Task Force makes the following recommendations:

1. The State's planning laws (Article 66B) should be amended to:

- a) Require a local government that has an Adequate Public Facilities Ordinance (APFO) to report every two years to MDP whether the APFO results in an APFO restriction, moratorium, or capacity problem within a PFA. That report shall include the location of the restriction, type of infrastructure involved, and the estimated time for the resolution of the restriction.**

- 1 b) Require MDP to prepare and publish a report every two years identifying
2 geographic areas and facilities within PFAs that do not meet local APFO
3 standards, and any improvements to those facilities that have been scheduled
4 and/or proposed in the jurisdiction's Capital Improvement Program (CIP).
5
- 6 2. Jurisdictions should consider waiving APFO restrictions for workforce housing,
7 affordable housing, and infill and revitalization projects within the PFA. Some
8 jurisdictions already have waivers for these types of development. The final
9 determination of waiver should be left to the local government, however.
10
- 11 3. The State of Maryland should identify new funding sources to be used for
12 infrastructure improvements within PFAs. State funding decisions should give high
13 priority to infrastructure projects that remove reasonable APFO restrictions,
14 moratoria, or other capacity problems that stop or limit development within PFAs
15 or reimburse local governments for forward funding of these projects.
16
- 17 4. The State should consider new sources of revenue to pay for State-funded
18 infrastructure to address APFO issues. An inter-agency and inter-governmental
19 Workgroup should be convened to study alternative approaches to raising such
20 revenues, with the results reported back to the Task Force by November 1, 2009 for
21 further review and recommendations.
22
- 23 5. Article 66B §11.01 should be amended to authorize local governments to establish a
24 transfer of development rights program to facilitate the purchase of land for a
25 school or other public facility within a PFA. Under this approach, the pre-existing
26 development rights associated with property selected to become a school or other
27 public facility could be sold to a third party, who would use those development
28 rights to obtain increased density on land elsewhere within the community served by
29 the school or public facility. Proceeds of the sale of development rights would be
30 used to help purchase the public site and/or construct the facility. (Article 66B
31 §11.01 currently provides that "a local legislative body that exercises authority
32 granted by this article may establish a program for the transfer of development
33 rights to: (1) Encourage the preservation of natural resources; and (2) Facilitate
34 orderly growth and development in the State.").
35
- 36 6. Voluntary communication and cooperation among the counties, municipalities, and
37 their local boards of education should be encouraged, especially with respect to
38 growth and capacity issues. Local jurisdictions and their boards of education
39 should meet at least twice a year to discuss how the jurisdiction and board will
40 handle growth issues related to school capacity, student growth projections, and

1 where possible, the siting of school facilities in a manner consistent with sound land
2 use and public facilities planning.

- 3
- 4 7. The State should work to increase the quality and quantity of demographic
5 information available to school boards to better project trends in student
6 population. Officials should use student generation rates based on actual experience
7 and consider geographical differences. Officials at all levels should cooperate on
8 strategies to increase enrollment at schools that are under capacity.
- 9
- 10 8. MDP should prepare a study on the practicality of building vertical "urban"
11 schools in the more densely built areas of PFAs. The study should also consider the
12 practicality of making schools part of a mixed use or transit oriented development
13 project and co-location of public facilities.
- 14
- 15 9. The State should examine the adoption of a 6-year CIP for school construction,
16 instead of the current 1-year, to give localities more predictability in funding.
- 17
- 18 10. **[INSERT RECOMMENDATION FROM ORIGINAL APFO WORKGROUP
19 RECOMMENDATION #8]**
- 20

21 **8. Address Maryland's Housing Challenges**

22 ***A. Increase resources and activities to support affordable/workforce housing***

23 As home prices have increased substantially over the last years accompanied by rising
24 construction costs, the resources available to support affordable housing activities at the State
25 and local levels have become stretched. Recent changes in the financial markets have lowered
26 the value of some important existing tools, such as Low Income Housing Tax Credits (LIHTC).
27 Expanded federal, State, and local actions through budgetary commitments as well as regulatory
28 actions are needed.

29 **The Task Force recommends that the State:**

- 30
- 31 • **Develop new funding sources to support Department of Housing and**
32 **Community Development and Local Government affordable and workforce**
33 **housing activities, complementing Congress's recent establishment of a**
National Housing Trust that may send additional resources to states by 2020.
 - 34 • **Work with Federal representatives to grow Federal formula-based housing**
35 **and community development funds such as HOME, Community**
36 **Development Block Grant (CDBG), Low Income Housing Tax Credits,**

1 **Mortgage Revenue Bonds, Housing Choice Vouchers, and Public Housing**
2 **funds.**

- 3 • **Encourage local governments to adopt local affordable housing strategies**
4 **including housing trust funds, inclusionary zoning, land trusts, payments in**
5 **lieu of taxes and waivers for local impact and development fees for**
6 **affordable housing.**
- 7 • **Target existing and new resources where possible to projects that help people**
8 **of modest income live near where they work or near viable transit options.**
- 9 • **Continue the State’s proactive emphasis on preserving homeownership in the**
10 **face of the national foreclosure crisis, and plan for the longer term by helping**
11 **families strengthen their household financial management and savings plans.**

12 **B. Expand housing information and policies in local comprehensive plans**

13 The location, shape, and quality of growth, transportation commuting patterns, as well as social
14 needs and services in communities, are influenced by the availability of housing. The failure to
15 adequately plan for housing adequate to support employment located in a jurisdiction also results
16 in relocation of households to other jurisdictions and even other states. In fact, according to the
17 2000 Census, Maryland has the 2nd worst commute in the country. These patterns often drive
18 growth and development to areas with cheaper land costs, which promotes sprawl. Yet, the
19 average cost of housing inside PFAs is generally less than outside the PFAs. Addressing housing
20 affordability would play a significant role in smarter growth management and is critical to
21 achieving more sustainable communities.

22 **The Task Force recommends that Maryland communities better incorporate housing**
23 **affordability into planning activities to help guide land use, zoning, and other development-**
24 **related decisions. Consideration should be given to including in local comprehensive plans**
25 **housing market information, a discussion of available affordable housing, local**
26 **development capacity, an analysis of housing availability in the context of employment, as**
27 **well as goals and strategies to address these and related issues.**

28
29 **C. Evaluate the benefits of creating community land trusts**

30 Community land trusts (CLTs) have the potential to create and support affordable and workforce
31 housing, particularly in jurisdictions with very high housing costs. The CLT model was created
32 approximately thirty years ago to address high housing prices in East Coast cities. However,
33 since then, CLTs have been used in all parts of the country. According to the National
34 Community Land Trust Network, there are currently over five thousand CLTs throughout the
35 country.

1 A CLT is a nonprofit organization that owns the land under a home, but not the home itself. A
2 homeowner must pay a nominal fee to the CLT to lease the land but owns the home in full. By
3 removing land costs, a CLT makes it easier for a low or moderate-income person to purchase a
4 home. An easement on the home restricts the homeowner from reselling the home above a
5 certain price, thus keeping CLT housing affordable in perpetuity. The CLT model may also be
6 applied to rental housing, housing cooperatives, and the preservation of family farms.

7 **The Task Force recommends that the use of CLTs in Maryland should be studied further**
8 **by the Department of Housing and Community Development, working with local**
9 **governments, advocates, and the community, to determine whether CLTs can help meet**
10 **Maryland's affordable housing needs. An initial report should be presented to the Task**
11 **Force by July 1, 2009.**

13 **9. Stimulate Revitalization of Existing Communities**

14 **A. Direct growth to older, existing communities, particularly to greyfields/brownfields, areas** 15 **near transit stations, and other specially designated areas such as BRAC Zones, Enterprise** 16 **Zones and Community Legacy Areas through reinvestment and/or tax credits**

17 Throughout Maryland, many areas are ripe for revitalization and redevelopment. Directing
18 growth to these areas is critical to combat sprawl and encourage Smart Growth. However,
19 revitalization and infill projects are often more costly than new construction due to land
20 assemblage costs, existing or previous uses (including environmental matters), and other site
21 constraints. Existing Smart Growth tools and incentives such as federal and State brownfields
22 programs, historic tax credits, Neighborhood Business Works, and the Community Legacy
23 Program play critical roles in stimulating growth in targeted areas, and the State has some new
24 programs such as BRAC Zones which are designed to link BRAC growth to communities
25 seeking revitalization. The protection of these programs is critical in today's budget
26 environment while a broader commitment of resources is fundamental in moving forward.

27 **As a Focus Area for the next phase of the Task Force's work, the Task Force will review,**
28 **categorize, and assess the State's existing revitalization incentives. The Task Force will**
29 **also review best practices and ideas from competing jurisdictions and around the country**
30 **and recommend additional incentives that are cost-effective and economically efficient,**
31 **yielding an acceptable return on the State's investment. A supplemental report should be**
32 **produced by July 1, 2009.**

33 **B. Find creative solutions to incentivize and encourage small business growth in existing** 34 **communities**

1 Many urban markets in Maryland, in particular, remain underserved by grocery, retail and other
2 businesses found in more suburban and affluent areas of the State. Overall reinvestment and
3 revitalization activities need to be accompanied by targeted programs and activities that can
4 expand and sustain the growth of amenities, services, and businesses to attract new investment in
5 such communities.

6 **As part of its work under recommendation 9(A) above, the Task Force will focus on**
7 **revitalization incentives directed at supporting the location of small businesses in**
8 **revitalization areas.**

9 **C. Reauthorize the Maryland Historic Tax Credit and Remove Caps**

10 One of the most powerful tools for revitalization of existing communities throughout the State
11 has been the Maryland Heritage Structure Rehabilitation Tax Credit Program. By focusing only
12 on historic structures, the program directs resources to existing communities where viable
13 structures await rehabilitation and expensive infrastructure is already in place.

14 From 1996 to 2003, the Maryland Heritage Structure Rehabilitation Tax Credit was widely
15 regarded as the most effective program of its type in the nation. During that period, respected
16 economic development and planning experts described the program as Maryland's most
17 powerful and effective Smart Growth, economic development and community revitalization tool.
18 The rehabilitation made possible by the tax credits has proven advantages over new construction
19 in its return on investment, increased tax revenues, job creation, energy and natural resource
20 conservation. Ironically, this very success and demand for the credits led to changes in the
21 program including adding competitive rankings, overall program caps, and caps on the amount
22 of credits that could be used in any one jurisdiction. As a result, the program's effectiveness has
23 been reduced -- in 2003, the year before these substantial limitations were imposed, 147
24 applications were received; in 2004, only 61 were received.

25 Unfortunately, some of Maryland's most capable and successful historic rehabilitation
26 developers have turned their attention to states where the state credits can be predictably
27 obtained and easily combined with federal historic preservation credits. For example, Virginia,
28 North Carolina, Missouri, New York, and Rhode Island do not "cap" their credit programs.

29 In addition to continuing problems resulting from the program's restructuring, an even more
30 fundamental issue is the looming July 1, 2010 sunset date for the entire credit program.

31 **The Task Force strongly recommends that the Maryland Heritage Structure Rehabilitation**
32 **Tax Credit Program be reauthorized and extended by the Governor and General Assembly**
33 **in the 2009 Session, and that jurisdictional and aggregate caps be removed, allowing the**
34 **program to continue providing an extraordinary return on investment for the State.**

10. Ensure Adequate Water and Sewer for Smart Growth

Water is a precious and finite resource, which must be managed to assure that future human needs can be met with sustained supplies while also maintaining healthy aquatic ecosystems. Maryland is committed to the restoration and preservation of the Chesapeake Bay, the Coastal Bays, and all its streams and rivers. It is also committed to protecting public health by assuring adequate supplies of safe drinking water.

Sprawling patterns of development can increase the amount of pollution entering our waters and threaten drinking water supplies. The conversion of forests, pastures and other rural uses to residential development not only destroys environmentally beneficial uses, but can also degrade water quality and impair streams by increasing the amount of impervious surfaces, which results in more runoff and associated pollution entering streams. Conventional septic systems do not remove nitrogen, which passes through the ground into the ground water and eventually becomes part of the water flowing in streams. Impervious surface from development encroaches on areas where precipitation percolates into the ground, reducing recharge of underground drinking water sources. Development on land that drains to surface drinking water sources also poses a risk. Sprawl development also results in more vehicle miles traveled, which increases nitrogen emissions to the atmosphere and the amount of nitrogen deposited onto the land and water from the atmosphere. Atmospheric sources of nitrogen are estimated to contribute approximately 30% of the nitrogen pollution loading to the State's waters.

To protect the environment, compact development is preferable to sprawling development. However, providing adequate drinking water and capacity for wastewater disposal for densely populated areas poses challenges in some areas of the State.

The Task Force recommends the following actions to manage water and sewer for Smart Growth.

A. Fund Hydrologic Studies and an Expanded Monitoring Network

The Maryland Department of the Environment (MDE), which issues permits to appropriate water, must avoid allocating more water than can be sustainably taken. As demand for water increases, the limits of the resource will be approached. MDE must have accurate, comprehensive data to support management and permit decisions. The Advisory Committee on the Management and Protection of the State's Water Resources, chaired by Dr. M. Gordon Wolman, recommended that two ground water studies be completed and the network of monitoring wells and stream gauges be expanded. *Water for Maryland's Future: What We Must Do Today* (2008). Together, these will provide the comprehensive statewide data and scientific tools needed to allow the maximum allocation of water in a sustainable fashion, without causing ecological damage. This issue affects towns and counties across the State that need more water, from the rocky regions of Western Maryland to the coastal plain of the Eastern Shore.

1 **The Task Force recommends that the State secure full funding for the hydrologic studies**
2 **and expanded monitoring network.**

3 **B. Develop Nutrient Trading for Non-point sources**

4 Cleaning up the Chesapeake and Coastal Bays and the streams and rivers that feed them has been
5 a State and local priority for decades. This will require that Maryland reduces the amount of
6 nutrient pollution (nitrogen and phosphorus) entering the Bay by millions of pounds a year. A
7 principal strategy for accomplishing this is the imposition of “nutrient caps” on wastewater
8 treatment plants, which contribute about 20% of the nitrogen entering the Bay. Once a treatment
9 plant reaches its cap, it cannot expand unless it finds a way to improve its treatment or offsets the
10 excess discharge by trading or otherwise. Some wastewater treatment plants that serve Smart
11 Growth areas will need to expand to accommodate increased population and jobs.

12 MDE issued its *Policy for Nutrient Cap Management and Trading in Maryland’s Chesapeake*
13 *Bay Watershed* in April 2008. As Phase I of a two-part Trading Policy, it establishes an
14 approach for trading nutrient allowances between point sources and trading involving the
15 removal of onsite sewage disposal systems (OSDS). A second phase of the Trading Policy,
16 being developed by the Maryland Department of Agriculture with other State agencies, will
17 allow trading between point sources and non-point sources. Phase II would enlarge the options
18 for trading, potentially benefiting wastewater treatment plants that need to expand to
19 accommodate growth.

20 **The Task Force urges that Phase II of the Trading Policy be completed and released for**
21 **comment as soon as possible, but no later than April 1, 2009.**

22 **C. Level the Playing Field by Requiring Onsite Sewage Disposal Systems, Like Onsite**
23 **Wastewater Treatment Plants, To Reduce their Nitrogen Discharges**

24 Onsite sewage disposal systems (OSDS) are commonly used in large-lot, sprawl development.
25 The average lot size for a house associated with OSDS is 7 to 8 times greater than those served
26 by central sewer. A conventional OSDS (*i.e.*, septic system) discharges about 30 pounds of
27 nitrogen every year. Some of this nitrogen is taken up by plants or otherwise removed during its
28 passage through the ground and ground water, but 30% to 80% of it can reach surface water.
29 Best Available Technology (BAT) can remove a considerable amount of the nitrogen from the
30 wastewater before it enters the environment. Currently, those installing septic systems or
31 subdividing land to be served by septic systems are not required to install BAT or to offset their
32 new discharges. In contrast, discharges of nutrients from wastewater treatment plants that serve
33 growth areas use BAT and are limited, and new plants must offset their discharges. The net
34 impact is that traditional septic systems pollute four times more per capita than development in
35 growth areas. Development costs associated with installation of a traditional septic system are
36 generally much less than sewer connection fees and have no continuing sewer service fee. This

disparity between the non-regulation of nutrient pollution from OSDSs and the regulation of wastewater treatment plants undermines the State's other efforts to foster Smart Growth.

The Task Force recommends that this disparity be corrected. Consideration should be given by MDE to the different impact an OSDS has depending on the geology and other characteristics of the region of the State in which it is located, and the cost per pound of nitrogen removed, in determining whether to require BAT, offsets, or both in any particular area of the State.

D. MDE Should Convene a Stakeholder Group to Discuss Ways to Give Priority in Allocations of Ground Water to Municipalities that Need Additional Water to Support the Desired Densities

A new law, HB 1423 (2008), allows MDE, when appropriating ground water, to give priority to public water systems that serve certain municipalities in Carroll, Frederick, or Washington Counties, provided it does not jeopardize the State's natural resources. MDE is authorized to adopt regulations to implement this practice.

The Task Force recommends that MDE convene a stakeholder group to discuss the adoption of regulations. Aspects of State water law, if any, that hamper implementation of this practice and options for eliminating barriers to implementation of new regulations should be identified.

E. MDE Should Convene Stakeholder Groups to Discuss Ways to Reuse Water

Water reuse offers an opportunity to reduce the demand for drinking water and can also reduce the amount of pollution entering the environment.

The Task Force recommends that MDE carefully review existing standards and the programs of other states to develop policies and regulations that maximize opportunity for water reuse without compromising public health. In addition, MDE should explore the use of State funds to help jurisdictions acquire rights for land application of treated wastewater. A preliminary report should be submitted to the Task Force for further review and comment by July 1, 2009.

11. Incorporate Climate Change into Growth Planning

There is scientific consensus that climate change and global warming are occurring, and the impacts of climate change and sea level rise will have far reaching implications for coastal areas in Maryland. Research has shown that effective Smart Growth policies can effect climate change issues, by helping reduce our carbon footprint, decreasing transportation trips, and avoiding coastal hazard areas. Due to its geography and geology, the Chesapeake Bay region is ranked the third most vulnerable to sea level rise, behind Louisiana and Southern Florida. In

1 addition to causing coastal inundation, climate change is likely to increase the risk of storm
2 damage throughout Maryland.

3 The Task Force is aware that Governor O'Malley established the Maryland Commission on
4 Climate Change by Executive Order. The Commission issued a report, *Climate Action Plan*, in
5 August 2008. The report identified numerous actions that could be taken to mitigate the effects
6 of climate change or respond and adapt to those changes. Some of these actions relate to land
7 use and patterns of growth.

8 **In its next phase of work, the Task Force will review the Climate Action Plan and consider**
9 **whether to make growth and development-related recommendations concerning the**
10 **actions identified in the Plan.**

11 12 **12. Promote Preparation and Adoption of State Development Plan,** 13 **State Housing Plan, and State Transportation Plan**

14 Among its responsibilities, the Task Force is charged with determining the parameters for a State
15 Development Plan, a State Housing Plan, and a State Transportation Plan, and with determining
16 how these plans work together with local land use plans. Since 1974, Maryland law has required
17 the preparation of a State Development Plan for submission to the Governor by MDP, but no
18 such integrated plan has ever been formally prepared. Governor O'Malley has requested that
19 such a Plan be prepared in furtherance of this long-standing requirement. At present, Maryland
20 law has no provision for a State Housing Plan, nor does it require the preparation of a State
21 Transportation Plan (although MDOT prepares a similarly-named document to meet federal
22 requirements). Nonetheless, the Task Force sees the value in the preparation of such Plans to
23 help guide the State's policy in these vital areas.

24 MDP, DHCD, and MDOT have presented the Task Force with proposed parameters for their
25 respective Plans, which have been reviewed by the Task Force as a basis for future development
26 of the Plans themselves. These draft parameters are contained in **Appendices [_____]**.

27 The three Departments and the Task Force have agreed that the State Housing Plan and State
28 Transportation Plan should ultimately be elements under the umbrella of the overall State
29 Development Plan. Accordingly, MDP, DHCD, and MDOT have been cooperating to synthesize
30 the parameters in anticipation of the process of Plan preparation. Development of a full set of
31 parameters is a complex, ongoing, and dynamic process which the Task Force will continue to
32 pursue in the next phase of its work. Meanwhile, the Departments will commence work on the
33 Plans using the draft parameters as a guide, recognizing that they are likely to be amended and
34 adjusted as the Plans themselves are developed.

1 Very few states have undertaken to prepare statewide development plans, and therefore
2 Maryland finds itself in the vanguard of states aspiring to such a comprehensive and coherent
3 assessment of statewide development and land use issues. To inform its work, the Task Force
4 expects to study approaches taken by other states to their state development plans. The Task
5 Force recognizes that development of the Plans themselves will be a considerable and time-
6 consuming undertaking by the lead State agency for each Plan, and will require the input and
7 involvement of many stakeholders, including other agencies of State government, local
8 governments, interest groups, and the public at large.

9 **The Task Force will work with MDP, DHCD, and MDOT on development of their**
10 **respective Plans by providing guidance, feedback, and support as the Plans are prepared.**
11 **This critical component of Maryland’s future land use planning will be a Focus Area for**
12 **the balance of the Task Force’s work.**

13 **13. Identify Inconsistent and/or Conflicting Laws, Regulations, and** 14 **Policies**

15 As in any complex governmental environment, where different entities regulate different aspects
16 of the same activities, opportunities for conflicting or inconsistent rules, regulations, and policies
17 exist. At the very least, these can lead to inefficiencies; at the worst, important public policies
18 could be subverted. The Task Force has asked local governments to identify any such conflicts
19 or inconsistencies they perceive in State law, regulation or policy that relate to land use, and
20 local government representatives on the Task Force and their respective organizations have
21 identified a number for consideration. The validity and seriousness of these issues has not yet
22 been determined or agreed upon, and time constraints have not permitted a full discussion and
23 analysis prior to issuance of this report.

24 **The Task Force recommends that MDP, MDE, and other relevant agencies meet with local**
25 **government representatives to evaluate potential internal conflicts and/or inefficiencies in**
26 **State land use law, regulations, and policy, including but not limited to those identified to**
27 **date. Findings should be reported back to the Task Force for further discussion,**
28 **evaluation and action, if necessary, by July 1, 2009.**

30 **14. Promote Smart Growth Education and Outreach**

31 Many efforts have been made in the past to teach Maryland’s citizens about Smart Growth,
32 including the Maryland Department of Planning’s “A Shore for Tomorrow” and “This is Smart
33 Growth”; there are also 28 Models and Guidelines available from MDP which detail many
34 different aspects of Smart Growth. However, the Task Force believes that there should be a

renewed effort and more focus on education, both about the issues themselves and about Maryland's leadership role in Smart Growth nationwide.

A. Create a broad-based educational and outreach program about Smart Growth, developed collaboratively by State and local government, including preparation of a Smart Growth curriculum

Many State agencies have tools and programs that can be used to promote Smart Growth effectively. Further, Maryland is fortunate to have ready access to the National Center for Smart Growth (NCSG), an international leader in Smart Growth policy development and education located at the University of Maryland College Park. A broad-based approach to outreach should include multiple State agencies working with local governments and other available resources, particularly the NCSG. Practical time constraints prevented the Task Force from engaging in any detailed discussion about a Smart Growth education program might contain or how it might be utilized, though the Task Force did establish the desirability of such a curriculum.

As a Focus Area during the balance of its work, the Task Force will create an Education Workgroup to review existing Smart Growth educational materials as well as past efforts. The Workgroup, including Task Force members, State and local agency representatives, the National Center for Smart Growth, and additional educators to be recruited, should jointly design a Smart Growth curriculum to educate the public about the growth and development challenges faced by Marylanders. Plans and programs should be made relevant to address the specific and local needs of individual jurisdictions.

B. Encourage the reinvigoration of the Maryland Planning Commissioners Association and link to the Maryland American Planning Association

2008 marks the 25th anniversary of the Maryland Planning Commissioners Association (MPCA). After a hiatus, MPCA is now meeting and planning its work program. This important group should have the best access to Smart Growth tools and be kept updated on growth and development issues in order to be able to effectively work with their local Planning Commissions to promote Smart and Sustainable Growth.

The Task Force supports the reinvigoration of the MPCA as a valuable component of Maryland's Smart Growth agenda.

15. Establish a Statewide Planning Advisory Committee

To its credit, Maryland had the first state planning commission in the nation, constituted in 1933. Yet, that commission's successor, the State Economic Growth, Resource Protection, & Planning

1 Commission, was dissolved by statute in 2003 leaving the State without an enduring, broad-
2 based public body charged with an ongoing role in the State's growth and development policy.
3 Even in its short existence, the Task Force has proven the value of having a statewide forum
4 where planning issues are discussed, common ground is identified, and differences are clarified.
5 In addition to making the recommendations contained in this initial report, the Task Force has
6 also served as a valuable venue in which diverse interests have convened to discuss critical
7 growth, development, and land use issues. The Task Force's enabling legislation will expire in
8 December 2010, however, and the State would again be left without a State-sanctioned venue for
9 discussion and resolution of these issues.

10 **The Task Force recommends that the State reconstitute a broad-based statewide planning**
11 **advisory commission including State and local officials, interest groups, and private**
12 **citizens. This group should provide advice and input on the further development and**
13 **implementation of the State Development Plan and also make recommendations on the**
14 **development and alignment of resources that affect growth and development in Maryland.**
15 **Importantly, the group will serve as an officially-recognized forum for discussion of growth**
16 **and development issues by a diverse group of stakeholders. The entity should be created**
17 **by statute prior to the expiration of the Task Force in December 2010.**

18
19 --end--